

1 Matt Olavi, Esq. (Bar No. 265945)
2 molavi@olavidunne.com
3 Brian J. Dunne, Esq. (Bar No. 275689)
4 bdunne@olavidunne.com
5 **OLAVI DUNNE LLP**
6 800 Wilshire Blvd., Suite 320
7 Los Angeles, California 90017
8 Telephone: (213) 516-7900
9 Facsimile: (213) 516-7910

10 *Attorneys for Plaintiff Eclipse IP LLC*

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 ECLIPSE IP LLC, a Florida Limited) Case No.
14 Liability Company,)
15) **COMPLAINT FOR PATENT**
16 Plaintiff,) **INFRINGEMENT**
17) **TRIAL BY JURY DEMANDED**
18 v.)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)
GOOGLE, INC., a Delaware)
Corporation; WAZE, INC., a Delaware)
Corporation,)
Defendants.)

1 Plaintiff Eclipse IP LLC (“Eclipse”), by and through counsel, complains
2 against Google, Inc. (“Google”) and Waze, Inc. (“Waze”) (collectively
3 “Defendants”) as follows:

4 **NATURE OF LAWSUIT**

5 1. This is a suit for patent infringement arising under the patent laws of
6 the United States, Title 35 of the United States Code § 1 *et seq.* This Court has
7 exclusive jurisdiction over the subject matter of the Complaint under 28 U.S.C.
8 §§ 1331 and 1338(a).

9 **PARTIES AND PATENT**

10 2. Eclipse is a company organized under the laws of Florida and having a
11 principal place of business at 115 NW 17th St, Delray Beach, Florida 33444.

12 3. Eclipse owns all right, title, and interest in and has standing to sue for
13 infringement of United States Patent No. 8,068,037 ("the '037 patent"), entitled
14 "Advertisement systems and methods for notification systems" (Exhibit A) ("the
15 Eclipse Patent").

16 4. On information and belief, Google is a corporation existing under the
17 laws of Delaware.

18 5. On information and belief, Waze is a corporation existing under the
19 laws of Delaware.

20 6. On information and belief, Google does regular business in this Judicial
21 District, maintains at least one office in this Judicial District, and conduct leading to
22 Google’s acts of infringement has occurred in this Judicial District.

23 7. On information and belief, Waze does regular business in this Judicial
24 District and conduct leading to Waze’s acts of infringement has occurred in this
25 Judicial District.

26 **JURISDICTION AND VENUE**

27 8. This Court has personal jurisdiction over Defendants because they have
28 engaged in continuous and systematic business in California; upon information and

1 belief, derive substantial revenues from commercial activities in California; and,
2 upon information and belief, are operating and/or supporting products or services
3 that fall within one or more claims of Eclipse's patent in this District.

4 9. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and
5 28 U.S.C. § 1400(a) at least because the claim arises in this Judicial District, Google
6 and Waze may be found and transact business in this Judicial District, and injuries
7 suffered by Plaintiff took place in this Judicial District. Google and Waze are
8 subject to the general and specific personal jurisdiction of this Court at least because
9 of their contacts with the State of California.

10 **FACTUAL BACKGROUND**

11 10. Beginning in approximately 2007, with the advent of what is
12 considered the modern smartphone, consumers and businesses have enjoyed
13 unprecedented benefits from these devices and the services that they support.

14 11. For example, consumers can now use their smartphones to search the
15 Internet, purchase products online, video conference with one another, and even
16 navigate from one place to another with turn-by-turn directions.

17 12. The growth of the mobile consumer, armed with a smartphone or tablet,
18 has spawned a panoply of new industries. One such industry is the mobile and
19 location-based advertising industry.

20 **Location-Based Retail Advertising**

21 13. Retail advertising is the process of calling the public's attention to a
22 business, usually for the purpose of selling products or services, through the use of
23 various forms of media. Advertising provides a direct line of communication to a
24 business' existing and prospective customers.

25 14. In the past, advertisers have used traditional forms of media, such as
26 print, radio, and television, to deliver these advertisements.

27 ///

28 ///

1 15. However, the advent of the smartphone and their now nearly-
 2 ubiquitous use among consumers in the United States have created an entirely new
 3 way to deliver advertisements based on the consumers' location.

4 16. Location-based advertising is a new form of advertising that integrates
 5 advertising with location-based services. Using the user's location or location
 6 history, location-based advertising allows businesses to target advertisements to
 7 users who are nearby. Advertisements sent to nearby users, such as someone
 8 driving past the retail establishment, are far more valuable to retailers than
 9 advertisements sent to someone else miles away.

10 17. For example, according to a recent study by Verve Mobile – a niche
 11 mobile advertising network – advertising campaigns that used location-based data
 12 performed twice as well as those that did not.

13 18. The effectiveness of mobile advertising has led to increased spending
 14 on mobile advertising in lieu of spending in other mediums. For example, according
 15 to Gartner, Inc. – a leading information technology research and advisory company
 16 – worldwide mobile advertising revenue in 2013 is expected to reach \$11.4 Billion
 17 and is expected to grow rapidly in the coming years. *See, e.g.*,
 18 <http://www.gartner.com/newsroom/id/2306215>.

19 19. Google has itself recognized the importance and value of using
 20 location-based information to deliver advertisements to consumers and has at least
 21 one patent itself related to mobile, location based advertising. *See, e.g.*, U.S. Patent
 22 No. 7,668,832, entitled “Determining and/or using location information in an ad
 23 system.”

24 **DEFENDANTS' ACTS OF PATENT INFRINGEMENT**

25 20. Eclipse reiterates and reincorporates the allegations set forth in
 26 paragraphs 1 through 19 above as if fully set forth herein.

27 ///

28 ///

1 21. On information and belief, Google is a technology company that offers
2 products and services ranging from cellular telephones and the famous Android
3 smartphone platform to a search engine, email hosting, and mapping services.

4 Google's Waze Navigation Application

5 22. In 2013, on information and belief, Google acquired Waze, a company
6 that developed a community-driven navigation application that notifies users of
7 upcoming, location-specific alerts ("the Waze App").

8 23. On information and belief, Google purchased Waze for in excess of \$1
9 Billion.

10 24. On information and belief and according to its website, the Waze App
11 is "the world's largest community-based traffic and navigation app."

12 25. On information and belief, the Waze App is a turn-by-turn navigation
13 application that directs a user to get from one location to another using audible and
14 on-screen notifications.

15 26. On information and belief, the Waze App monitors the location of a
16 user and notifies the user of police, accidents, road hazards, or traffic jams along the
17 user's route using a visual and/or audio notification.

18 27. On information and belief, the Waze App also notifies the user of his
19 progress in reaching the destination by identifying the user's present location on a
20 map and indicating the amount of time until the user reaches his destination.

21 28. On information and belief, the Waze App also functions as an
22 advertising system, allowing businesses to advertise services to nearby Waze App
23 users.

24 29. On information and belief, businesses may place a branded pin ("a
25 Pin") that represents the business on Waze maps.

26 30. On information and belief, this Pin can be customized to include the
27 businesses logo, icon, or other image, and functions like an interactive billboard.
28

1 31. On information and belief, users can select the Pin to find out more
2 about the business, to hear about specials, or to navigate directly to the business
3 location.

4 32. On information and belief, the Waze App also allows businesses to
5 provide “special promotions and red light pop-ups” to drivers who are stopped at red
6 lights. These notifications are provided for users who are stopped within 5
7 kilometers of the business’ Pin and allow the business to notify the users of coupons
8 or special discounts that are available in store.

9 33. On information and belief, Defendants earn revenue from the Waze
10 App through at least advertising revenue. For example, one or both Defendants earn
11 a fee from advertisers each time the advertiser’s Pin is displayed to a user on the
12 map.

13 Google’s Google Maps Application

14 34. On information and belief, Google Maps is a mapping application,
15 available for both Apple Inc.’s iOS and Google’s Android operating platforms,
16 offered by Google.

17 35. On information and belief, Google Maps monitors the user’s location
18 and provides turn-by-turn instructions to direct the user to a desired destination.

19 36. On information and belief, Google Maps notifies the user of his
20 progress in reaching the destination by identifying the user’s present location on a
21 map and indicating the amount of time until the user reaches his destination.

22 37. On information and belief, Google Maps also functions as an
23 advertising system, allowing businesses to advertise services to nearby Google
24 Maps users.

25 38. On information and belief, when users search for a location within
26 Google Maps, Google delivers ads to the user that are based, at least in part, on the
27 user’s location.

39. On information and belief, Google earns revenue from Google Maps through at least advertising revenue. For example, Google earns a fee from advertisers each time an advertisement is displayed to the user and/or each time an advertisement is selected by the user.

CLAIMS FOR RELIEF

COUNT 1

(Patent Infringement of U.S. Patent No. 8,068,037
Under 35 U.S.C. § 271 *et seq.*)

40. Eclipse reiterates and reincorporates the allegations set forth in paragraphs 1 through 39 above as if fully set forth herein.

41. On November 29, 2011, the United States Patent and Trademark Office duly and legally issued United States Patent No. 8,068,037, entitled, "Advertisement systems and methods for notification systems." Eclipse is the owner of the entire right, title and interest in and to the '037 patent. A true and correct copy of the '037 patent is attached as Exhibit A to this Complaint.

42. The '037 patent is valid and enforceable.

43. Eclipse is informed and believes, and thereupon alleges, that: (1) Defendants have infringed and continue to infringe one or more claims of the '037 patent, literally and/or under the doctrine of equivalents and additionally and/or in the alternative, (2) Defendants have actively induced and continue to actively induce and/or have contributed to and continue to contribute to the infringement of one or more claims of the '037 patent in this District and elsewhere in the United States.

44. On information and belief, Defendants have directly infringed and continue to directly infringe one or more claims of the '037 patent, in violation of 35 U.S.C. § 271(a), by, among other things, making, using, offering for sale, and/or selling a method for advertising in connection with a computer-based notification system to, for example: monitor travel data associated with a user during turn-by-

1 turn navigation; determine that a notification should be made based upon the user's
2 location; provide a notification when the user is near his destination; and provide
3 advertisements as part of or accompanying the notification communication in
4 exchange for a fee.

5 45. Additionally and/or in the alternative, on information and belief,
6 Defendants have actively induced and continue to actively induce and/or have
7 contributed to and continue to contribute to the infringement of one or more claims
8 of the '037 patent, in violation of 35 U.S.C. § 271(b) and/or (c), by, among other
9 things, actively, knowingly, and intentionally encouraging, aiding, and/or abetting
10 others to make, use, offer for sale, and/or sell portions of a computer-based
11 notification system that infringes one or more claims of the '037 patent, with the
12 specific intent to encourage infringement and with the knowledge that the making,
13 using, offering to sell, and/or selling of such a system would constitute
14 infringement.

15 46. On information and belief, Defendants have had knowledge of the '037
16 patent at least as early as December 27, 2013, the day that each received a courtesy
17 copy of the Complaint, which set forth factual allegations of both Google's and
18 Waze's infringement. Additionally, at least as early as December 27, 2013,
19 Defendants knew or should have known that their continued offering, use,
20 deployment, and/or operation of the at least one computer-based notification system
21 and their continued support of others, if those parties perform any limitations of one
22 or more of the claims of the '037 patent, would induce direct infringement of the
23 '037 patent, as they had actual knowledge of the patent and factual allegations of
24 their infringement thereof.

25 47. On information and belief, Defendants have not changed or modified
26 their infringing behavior since December 27, 2013.

27 48. Defendants' aforesaid infringing activity has directly and proximately
28 caused damage to Plaintiff Eclipse, including loss of profits from sales and/or

1 licensing revenues it would have made but for the infringements. Unless enjoined,
2 the aforesaid infringing activity will continue and cause irreparable injury to Eclipse
3 for which there is no adequate remedy at law.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff Eclipse asks this Court to enter judgment against
6 Defendants and against each of Defendants' respective subsidiaries, affiliates,
7 agents, servants, employees and all persons in active concert or participation with
8 them, granting the following relief:

- 9 1. A judgment that Defendants have infringed the Eclipse Patent;
- 10 2. A permanent injunction against Defendants, their respective officers,
11 agents, servants, employees, attorneys, parent and subsidiary corporations, assigns
12 and successors in interest, and those persons in active concert or participation with
13 them, enjoining them from direct and indirect infringement of the Eclipse Patent;
- 14 3. An award of damages adequate to compensate Eclipse for the
15 infringement that has occurred, together with prejudgment interest from the date
16 infringement of the Eclipse Patent began;
- 17 4. A reasonable royalty for Defendants' use of Eclipse's patented
18 technology, as alleged herein;
- 19 5. An award to Eclipse of all remedies available under 35 U.S.C. §§ 284
20 and 285; and,
- 21 6. Such other and further relief as this Court or a jury may deem proper
22 and just.

23
24 ///

25 ///

26 ///

27 ///

28 ///

1 DATED: December 27, 2013

OLAVI DUNNE LLP

2 By: /s/ Matt Olavi

3
4 Matt Olavi
5 Brian J. Dunne
6 *Attorneys for Plaintiff*
7 *Eclipse IP LLC*

8 **JURY DEMAND**

9 Eclipse demands a trial by jury on all issues so triable pursuant to Federal
10 Rule of Civil Procedure 38.
11

12
13 DATED: December 27, 2013

OLAVI DUNNE LLP

14 By: /s/ Matt Olavi

15
16 Matt Olavi
17 Brian J. Dunne
18 *Attorneys for Plaintiff*
19 *Eclipse IP LLC*
20
21
22
23
24
25
26
27
28